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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

Everyone is interested in the new Revenue Bill now before Congress. This Bill has passed the House of Representatives and is now awaiting action by the Senate. It is important in that it contains material reductions in rates and elimination of "nuisance" taxes indicating a distinct downward trend in the matter of Federal taxation. The progress of the Bill is being watched closely by The Corporation Trust Company and those interested are being advised through its Congressional Legislative Service of all action taken. When the Bill finally passes, the new law, to the extent of its general application, will be covered by this company's Federal Tax Service. Therefore, through these services those interested in Federal taxation may keep themselves fully informed of all matters relative to the Revenue Bill from the present time until enactment, and to the provisions of "The Revenue Act of 1926," thereafter.

Kenneth Kerr Lawson

President

Safeguarding Transfers of Stock

A statement frequently made to transfer agents is: "You people are too technical; other agencies let transfers go through without all these requirements." This remark is usually made as a part of an effort to get the transfer agent to "let down the bars" and to "waive" a rule or requirement, a certificate of appointment, a court order, an affidavit or some other document or documents as a part of the supporting papers incident to a proposed transfer of stock. Investigation shows that the other transfer agents seldom "waive" the requirements and the statement is not based upon a fact. Transfer agents have been strengthened in the enforcement of their requirements by the work of the New York Stock Transfer Association. This association, embracing membership of the leading transfer agencies throughout the United States and Canada, has formulated rules for the transfer of securities which are now accepted as standard. These rules are becoming the custom in this line of work and are enforced not only by the large agencies and corporations transferring their own stock, but by the United States Government with respect to the registration and transfers of securities issued by it.

A recent court decision by the Supreme Judicial Court of Massachusetts in Palmer v. O'Bannon Corporation, et al., 149 N. E. 112, contains interesting remarks regarding the duty of a corporation and of a transfer agent with respect to the issuance and transfer of stock. It appears that a stockholder had endorsed a certificate for shares in blank and had delivered the certificate to a person who afterwards claimed that he held the shares as collateral security. Subsequently the corporation's officers heard rumors concerning the stockholder's mental condition. These rumors were followed by information of his being committed to a hospital and thereafter being declared to be incompetent by a New York court. The board of directors of the corporation notified the bank which was acting as transfer agent to make no transfer of shares out of the name of the stockholder in question without express instructions. Consequently, the stock was not transferred when presented. Litigation was instituted and a transfer ordered by the court. The case was then referred to a master for a hearing with respect to the plaintiff's claim for damages for failure to transfer the stock when presented. Recovery of damages was denied. Among other things the court says:

> "It was the duty of the proper officers of the corporation to ascertain whether its stock was being transferred in accordance with its by-laws and in accordance with the law before issuing new certificates. Allen v. South Boston Railroad, 150 Mass. 200, 204; 22 N. E. 917, 58 L. R. A. 716, 15 Am. St. Rep. 185. And under the blank power of attorney of O'Bannon it was the duty of the pledgee and not the duty of the defendants to fill in the

blanks with his own name and if this was not done a complete instrument had not been presented."

The Stock Transfer Guide and Service issued by The Corporation Trust Company has just been revised and contains a great deal of new and useful material to corporations, to transfer agents and to counsel for the proper and safe registration and transfer of securities. Copies of this Guide and Service will be sent upon approval or may be seen at any of the offices of The Corporation Trust Company.

Domestic Corporations

Arkansas.

Liability of officers on failure to file statutory report. The state of Arkansas has a statutory provision making it the duty of the president and secretary of every corporation to make certain reports, certify the same and file with the county clerk of the county in which the corporation is engaged in business, concerning its corporate actions and affairs. And if this corporate duty is not performed, another statute makes the officers liable for all debts contracted during the default of the officers in not making the above mentioned reports. These statutory provisions are found in sections 1715 and 1726, Crawford & Moses digest. In an action to enforce this liability, the United States Circuit Court of Appeals (Eighth Circuit) holds that the liability of the officers is limited to such debts of the corporation as are contracted during the period of neglect or refusal to file the report. It was contended by the officers that an assignment for the benefit of creditors had been made and that as a condition of, and a consideration for, the making of this assignment, an express parol agreement that the corporation should be absolutely relieved from any further liability on account of its indebtedness to its creditors was entered into. The court in holding this agreement to be no defense says that an examination of the decisions of the Supreme Court of Arkansas, discloses it to be the settled rule that a conditional stipulation in a general assignment for the benefit of creditors, if accepted, shall extinguish and satisfy all liability of the maker to creditors, renders the assignment invalid, because it tends to hinder, delay and defraud creditors in the collection of their just debts. Simmons Hardware Co. et al. v. Rhodes et al., 7 F. (2d) 352. Arthur L. Adams, of Jonesboro (Morton Jourdan and Fred L. English, both of St. Louis, Mo., H. M. Cooley and Robert E. Fuhr, both of Jonesboro, and George N. Dunn, of St. Louis, Mo., on the brief), for plaintiffs in error. J. T. Coston of Osceola, (W. J. Driver and S. R. Simpson, both of Osceola, on the brief), for defendants in error.

California.

Directors meeting may either be held at "office" or "principal place of business." This action involves an application by the Moreno Mutual Irrigation Company for a writ of mandamus to compel the secretary of state to file in his office, a certificate relating to the creation

of a proposed bonded indebtedness of the corporation. It appeared that the refusal of the secretary of state was based solely upon the fact that the meeting of the board of directors called for the express purpose of acting upon the necessary preliminary resolution for the creation of the proposed bonded indebtedness was not held at the "principal place of business" of the corporation as designated in its articles of incorporation but was held at the "office" as provided in its by-laws. The Supreme Court of California in allowing the writ cites section 319 of the Civil Code, providing that meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business. "It is therefore apparent that by the plain provisions of the statute the board of directors of the petitioner was authorized to hold its meeting at its office." Moreno Mut. Irr. Co. v. Jordan, Secretary of State, 239 Pac. 716. Tanner, Odell & Taft, of Los Angeles for petitioner. W. F. Cleary, of San Francisco, for respondent.

Corporation held bound by acts of its officers who owned practically all of its stock. The question presented in the instant case is based on the alleged promise of the Grizzly Creek Lumber Company to pay the indebtedness of the Shasta Mill & Lumber Company for merchandise sold and delivered. It was shown that two of the officers of the Grizzly Creek company, apparently acting on its behalf had taken over the property of the Shasta Mill & Lumber Company, had agreed to assume its debts, and had transferred the property to the Grizzly Creek company; but it was contended that by so doing they had not acted as representatives of the Grizzly Creek company. The California District Court of Appeals (Third District) found that the two officers owned practically all of the stock of the Grizzly Creek company, the other stockholders being merely nominal and that they, together with their attorney dominated the company and held the principal offices. All three were present at the time the agreement was signed to assume the obligations of the Shasta company. They became the directors and controlling factors of both corporations. They planned and executed the transfer of the property. "While strictly speaking, this may not be said to be what the law calls a 'one-man corporation,' evidently it was a two-man corporation. The principle is the same. Under such circumstances the conduct, actions, and promises of these officers, constituting a controlling majority of the board of directors, will bind the corporation. The corporation will be deemed to have knowledge of their conduct and contracts. Having obtained and held the property constituting a material part of the contract of purchase, the corporation will be estopped from denying its obligation to pay the debts, which was a material part of the agreement. Having accepted the fruits of the contract, it may not refute the burdens." McCormick Saeltzer Co. v. Grizzly Creek Lumber Co., 240 Pac. 32. John F. Barnett, of San Francisco, for appellant. Carr & Kennedy, of Redding, for respondents.

Georgia.

Blue Sky Law. The Supreme Court of Georgia in holding unconstitutional part of the "Georgia Securities Law," because it contains matters different from and contrary to that expressed in the title of the statute, says: "So as the title of the act of 1920 provides for the license of dealers in securities and their agents alone, and as the title of the act of 1922 provides for the license of all dealers other than the issuers of securities and of their agents, thus expressly excepting issuers of securities, so much of the bodies of these acts as requires issuers to procure licenses to sell or offer to sell securities, and so much of section 36 of the amended act of 1922 as makes it a felony for the issuers to sell or offer to sell securities, without first obtaining licenses so to do, are unconstitutional and void, because these provisions, contained in the bodies of these acts, contain matter different from what is expressed in their title, and because the body of the amending act of 1922, in so far as it requires issuers to obtain licenses, and makes it a felony for them to sell or offer to sell securities without first obtaining licenses so to do, contains matter contrary to the express purpose set out in the title of this statute." Smith v. State, 129 S. E. 766. Branch & Snow, of Quitman, and Whitaker & Dukes, of Valdosta, for plaintiff in error. C. E. Hay, Sol. Gen., of Thomasville, R. G. Dickerson, Jr., of Valdosta, Geo. M. Napier, Atty. Gen., and T. B. Conner, of Atlanta, for the state.

Michigan.

Corporation not dissolved by assignment for benefit of creditors. Directors required to return salaries voted themselves as officers. The Supreme Court of Michigan says, in a recent decision, that an assignment for the benefit of creditors, made in accordance with a resolution of the board of directors, providing for the payment of creditors out of the corporate assets and the return to the corporation of any excess, does not operate as a dissolution of the corporation. Another point raised involved the right of certain directors, who constituted a majority of the board and held the principal offices of the corporation in voting themselves salaries at various directors' meetings. The court in affirming the decision of the lower court in ordering the return of the salaries so paid says that at each meeting of the stockholders the action of the board of directors, inclusive of fixing salaries, was approved; but the officers so receiving salaries, held a majority of the stock and, in fact, approved their own acts as directors. The action of the directors was void and being void there could be no ratification by the stockholders. The court in reaching this conclusion cites the case of Davis v. Thomas & Davis Co., 63 N. J. Eq. 572, as follows: "It is entirely settled that, where directors of a corporation attempt to deal with themselves, their acts are the subject of judicial inquiry and supervision. Directors cannot fix the value of their own services to the corporation. Whenever they attempt to do so, and their action is challenged by a stockholder, or other interested persons, the burden is upon them to show what they have done to merit payment, and the quantity of compensation to which they are entitled is to be graded, not by the sum voted, but by what they earn." McKey

v. Swenson et al., 205 N. W. 583. Wurzer & Wurzer, of Detroit, for appellants. Stevenson, Carpenter, Butzel & Backus, of Detroit, and Grossberg, Haffenberg & Kopald, of Chicago, Ill., (J. G. Grossberg of Chicago, Ill., and Charles A. Wagner, of Detroit, of counsel), for appellee.

New Jersey.

Corporation acquiring stock control of another for the purpose of using it as mere agency held chargeable for its purported acts. In an action involving a patent the evidence disclosed that one corporation was the mere instrumentality of another, the stock having been acquired for the purpose of using the corporation as a cover for the acquiring company's own transactions; and that the acquiring company supplied from its own employees, officers for, and completely dominated the other company. The United States Circuit Court of Appeals (Third Circuit) in holding that the purported acts of the one company were chargeable to the other, says: "Where stock control has been resorted to not for the purpose of participating in the affairs of the corporation in the normal and usual manner, but for the purpose of controlling the company, so that it may be used as a mere agency or instrumentality of the owning company, courts will look through the screen of separate corporate control and place the responsibility where it actually belongs." Radio-Craft Co., Inc., et al. v. Westinghouse Electric & Mfg. Co., 7 F. (2d) 432. Thomas G. Haight, of Jersey City, Samuel E. Darby, Jr., of New York City, and Edward J. O'Mara, of Jersey City, for appellants. Charles Neave, Stephen H. Philbin, and James J. Cosgrove, all of New York City, for appellee.

Texas.

Agreement between corporation and preferred stockholders held to require payment of stipulated dividend when earned, or if not earned, out of assets at dissolution. In an action based on certain promissory notes given in the sale of corporate stock, one of the questions presented was whether or not the seller was at the time of the sale entitled to entertain the view that he had a claim for dividends on the stock sold. A certain amount was mentioned and assigned by the seller to cover accrued dividends, but as the corporation had never paid a dividend it was claimed there was no basis for this assumption. The Court of Civil Appeals of Texas, in passing on this point refers to the following provision with reference to dividends, in the minutes of the corporation:

"The preferred stock shall be paid (if earned) 10 per cent. dividends payable quarterly, 2½ per cent. quarterly. It shall have preference both as to dividends and assets.

"In the event of the failure of the company to pay four successive quarterly dividends to the preferred shareholders, then and thereafter until all past dividends are paid the preferred shareholders shall have equal voting rights and power with the common stockholders. Otherwise the entire conduct of the business shall be in the common stockholders.

"At any time after 3 years the company may after 30 days' due

notice by mail to the last address of the preferred shareholders of record at its option retire any and all preferred stock at $110 per share and accrued dividends."

The court says in connection with the above provision that this agreement of the corporation with the holders of its preferred stock carrying no specification to the contrary, not only meant, under well settled authority, that the dividends were to be cumulative, but was mutually so intended and construed by the parties; indeed, this contract went further and extended the cumulative dividend rule applied by the authorities to the assets of the corporation in case of dissolution, thereby more plainly still evidencing the understanding between it and the holders of its preferred stock that they should be paid the stipulated return whenever earned, or, if not made by operation, then at dissolution out of the assets. Langben v. Goodman, 275 S. W. 841. Stewarts and Brantly Harris, all of Galveston, for appellant. Elmo Johnson, Roy Johnson, and Marsene Johnson, Jr., all of Galveston, for appellee.

Wisconsin.

Where pledgee of stock has notice of assignment by pledgor, it is liable to assignee for permitting pledgor to sell the stock involved. This action was brought against the Green Lake State Bank, for permitting one Edwards, who had deposited certain shares of corporate stock with it as collateral for a loan, to dispose of the shares, after it had received notice that Edwards had assigned all right or interest that he had in the shares so deposited, to another. The assignee exhibited the assignment to the cashier of the bank and it is now his claim that the bank, in allowing Edwards to dispose of the stock violated its duty as pledgee. The Supreme Court of Wisconsin in holding the bank liable says that whether the bank parted with possession of the stock and permitted its resale to a third party because it overlooked assignee's rights therein or did it in disregard of his rights is immaterial so far as its liability is concerned. Notice having been brought home to it that he was the assignee of the equity of redemption, it was the duty of the bank thereafter to protect him in his rights by delivering the stock upon repayment of the amount which was pledged, to the assignee. Davison v. Green Lake State Bank, 205 N. W. 389. Martin & Kelley, of Fond du Lac, for appellant. T. L. Davison and James Murray, both of Fond du Lac, for respondent.

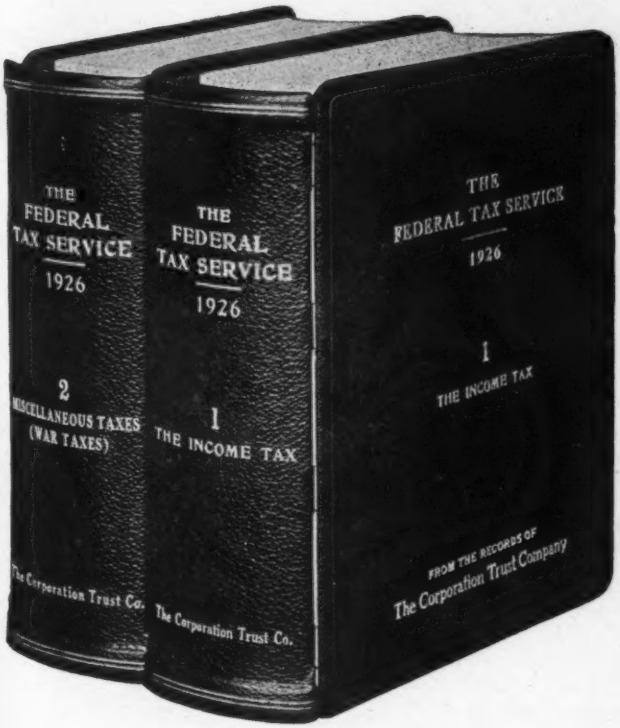
Definition of consolidation and merger. The Supreme Court of Wisconsin says that the terms "consolidation" and "merger" are often used somewhat loosely and sometimes as meaning the same thing. But it seems to be well settled that a merger does not mean the same thing as consolidation, but exists where one corporation remains in being and merges in itself one or more other corporations; but the effect of consolidation is to work a dissolution of the companies consolidating and to create a new one out of the elements of the former ones. Union Indemnity Co. v. Railroad Commission et al., 205 N. W. 492. H. L. Ekern,

Atty. Gen., and M. B. Olbrich, of Madison, for appellant. B. F. Saltzstein, of Milwaukee, for respondent. James D. Shaw, of Milwaukee, for intervening stockholders.

Foreign Corporations

Arkansas.

Construction of bridge partly through sub-contractor, held to constitute doing business. Shipment by foreign corporation to itself for delivery to sub-contractor. In May, 1921, the Kansas City Structural Steel Company, a foreign corporation, made a bid for the construction of a bridge in Ashley County, Arkansas. Its offer was accepted and a contract covering the work was signed in Ashley County by representatives of the parties. In June, 1921, the company sub-let all of the work except the erection of the steel superstructure. In August, 1921, the company qualified as a foreign corporation but before such permit was obtained the greater part of the work sub-let had been completed and the corporation had made certain shipments of steel from Kansas City, Missouri, to itself in Arkansas for use in the construction and these materials had been delivered to the sub-contractor and used in the performance of the work done by it. The steel for the superstructure was fabricated by the company in Kansas City, some before and some after the permission was obtained. The Supreme Court of Arkansas held the things done prior to August, 1921, to be intrastate business, (see The Corporation Journal, No. 127, page 140), and this decision is now affirmed by the Supreme Court of the United States. The court in its decision says that from the beginning, transactions local to Arkansas were contemplated. In fact the corporation obtained permission to do business in Arkansas in order to be authorized to erect the steel superstructure—the part of the work it had not sub-let. Before obtaining such permission, it made the bid and signed the contract in Arkansas; it shipped from Kansas City to itself, the materials for the performance of the work it had sub-let, and, after the interstate transit had ended, delivered them to the sub-contractor who used them in the work. The delivery of the materials to the sub-contractor was essential to the building of the bridge, and that was an intrastate and not an interstate transaction. The fact that the materials had moved from Missouri into Arkansas did not make the delivery of them to the sub-contractor interstate commerce. So far as concerns the question here involved, the situation is the equivalent of what it would have been if the materials had been shipped into the state and held for sale in a warehouse, and had been furnished to the sub-contractor by a dealer. Kansas City Structural Steel Co. v. State of Arkansas for the Use and Benefit of Ashley County. Supreme Court of the United States. No. 54, October Term, 1925, (November 16, 1925). Charles T. Coleman and J. W. House, Jr., both of Little Rock, for plaintiff in error. J. R. Wilson, of El Dorado, for defendant in error.



This Service, either in the looseleaf binders here pictured or its supplementary "shoestring" binder of all the Government's Cumulative Bulletins, contains and keeps constantly up to date the full text of the law relating to the Income Tax, Estate Tax, Gift Tax, Excess Profits Tax, Capital Stock Tax, Stamp Taxes, Sales Taxes, Tax on Admissions and Dues, and Special Taxes on Occupations; presents all Treasury Decisions and official Regulations relating to those taxes and the decisions of the United States Board of Tax Appeals; presents all the supplementary rulings, including Opinions of the Attorney General, Solicitor's Opinions, Recommendations and Memoranda of the Advisory Tax Board and of the Committee on Appeals and Review (neither of which bodies are now functioning but whose decisions are still of weight as precedents), Office Decisions, Decisions of the Income Tax Unit, Mimeograph Letters to Collectors and Agents; reproduces the COMPLETE TEXT of every controlling court decision either of the U. S. Supreme Court or lower courts and, in addition, summaries and citations of ALL OTHER prior lower court decisions on the taxes covered, since 1913. All this information is kept up to date throughout the year, and all is arranged and indexed on such a system that the exact portion or portions of it you need for any particular question can be located at once.

North Carolina.

Person collecting money in state for foreign corporation held "local agent" for service of process within meaning of statute. In an action against the Four Wheel Drive Auto Company, a foreign corporation, alleged to be "doing business" in North Carolina without having qualified, service of process was made upon two persons trading as the Raleigh F. W. D. Sales Company, general agents of the corporation. The Supreme Court of North Carolina in upholding such service says that it is provided by statute that in an action against a foreign corporation brought by a resident of the state, service of summons may be had by delivering copy to the managing or local agent thereof. And any persons receiving or collecting money in the state for a corporation is a local agent for the purposes of this section. It has been held that this authority to receive money is not the only test of a local agent upon which service of process could be made. This language was not intended to limit the service to such agents but rather to extend the word "agent" to embrace them. The authority to receive money of itself makes one a local agent for the purpose of the statute but this is not the exclusive test of agency. Cape Fear Rys., Inc. v. Cobb et al., 129 S. E. 828. Manning & Manning, of Raleigh, for appellant. Cansler & Cansler, of Charlotte, and Dye & Clark, of Fayetteville, for appellee.

Service of process may be made on secretary of state where foreign corporation doing business in state fails to maintain statutory agency. In an action against the Commercial Travelers' Mutual Accident Association of America, a foreign corporation without process agent, property or license to do business in North Carolina, service of process was sought to be obtained by leaving a true copy thereof with the secretary of state. Covering this point, the Supreme Court of North Carolina says: "The statute provides that every corporation having property or doing business in this state, whether incorporated under its laws or not, shall have an officer or agent in the state, upon whom process in all actions or proceedings against it can be served. A corporation failing to comply with the provisions of this section is liable to a forfeiture of its charter, or to the revocation of its license to do business in the state. In the latter event (failing to comply with the provision requiring the presence of a process officer or agent in this state), process in an action or proceeding against the corporation may be served upon the secretary of state by leaving a true copy thereof with him, and he shall mail a copy to the president, secretary, or other officer of the corporation upon whom, if residing in this state, service could be made; and, in case of foreign corporations doing business in this state without complying with the provisions of said section, we have held that valid service of process may be had under this statute in the manner indicated, as well as on officers and agents of such corporations under the general provisions of C. S. 483." The court further held the company to be "doing business" in the state by issuing insurance to a resident applicant on an application dated at the post-office address of the applicant and carrying a recommendation by a resident already insured. The acceptance of the applica-

tion also carried the post-office address of the recommending member. One of the company's claims was that it never had any paid agents, servants or employees to solicit membership. Lunceford v. Commercial Travelers' Mut. Acci. Ass'n of America, 129 S. E. 805. Gavin & Boney, of Kenansville, for appellant. Oscar B. Turner, of Rose Hill, for appellee.

Taxation.

Connecticut.

Interstate Commerce. The Fox Film Corporation and the American Feature Film Company, Inc. brought suit to enjoin enforcement of an act passed by the General Assembly of Connecticut imposing a tax on motion picture films exhibited in the state on the ground that it constituted an interference with and a burden on interstate commerce. The United States District Court (Connecticut) in upholding the act discusses interstate commerce, saying that interstate commerce begins when the articles to be carried are committed to a carrier for transportation to the state of its destination or started on their ultimate passage, and interstate commerce ceases when the articles have arrived at their destination, and are there held for final disposal or use and it has been held that property is at its destination when it reaches a place where it is held, not in necessary delay or accommodation to the means of transportation, but for the business purposes and profits of its owner. It has been held then to be under the protection of the laws of the state and subject to the taxing and police power. The Constitution gives to Congress the right to regulate commerce between the states. It does not, however, define what the term "commerce" means or includes, but, as used, it comprehends intercourse for purposes of trade, and includes among other incidents the transportation of commodities from one state into another state; and the general rule is that goods coming into a state from a foreign state are free from state interference so long as they remain in the original unbroken package. Fox Film Corporation v. Trumbull, Governor of Connecticut, et al. American Feature Film Co., Inc., v. Same, 7 F. (2d) 715. Benedict M. Holden, of Hartford, and Cadwalader, Wickersham & Taft, of New York City (George W. Wickersham and Edwin P. Grosvenor, both of New York City, of counsel), for plaintiffs. Frank E. Healy, Attorney General, and Shipman & Goodwin, of Hartford (Arthur L. Shipman, of Hartford, of counsel), for defendants.

Missouri.

License tax on manufacturer held to apply only to product manufactured within state. Under an ordinance of the City of St. Louis, there is levied a license tax upon manufacturers of one dollar per $1,000 of the value of their finished products. The amount of the tax is computed upon the sales price of the finished product. The sole issue here is the validity of the tax levied against the International Shoe Company, a Delaware corporation, licensed to do business in the state on account of shoes manufactured by it outside of St. Louis, and sold and delivered to customers in other states. It was shown that the

shoes manufactured in other states were shipped to St. Louis and there stored in warehouses to await disposal, and by reason of this, it was sought to bring the corporation within the meaning of the term "manufacturer" defined as one purchasing personal property for the purpose of adding to its value by any process of manufacturing, etc., or shall purchase and sell manufactured articles such as he manufactures or uses in manufacturing. The Supreme Court of Missouri in refusing to accept this, and holding the company not liable for the product manufactured in other states says that the corporation could not be held to be a purchaser of its own shoes by physical transfer of them from one of its factories in another state to a warehouse in St. Louis, nor was such transfer and the mingling of some of the shoes with others made in St. Louis or elsewhere, for the purpose of filling orders, a "use in manufacturing." State ex rel. International Shoe Co. v. Chapman, et al, 276 S. W. 32. Frank Y. Gladney and R. E. Blake, both of St. Louis, for relator International Shoe Co. Eugene C. Slevin of St. Louis for respondent Oliver Chapman. Oliver Senti, City Counselor, and Daniel Bartlett, Associate City Counselor, both of St. Louis, for respondents Robert Wycoff, Jr., Edwin Nolte, and Edward E. Butter.

New Hampshire.

Income tax law held constitutional. This action involves a petition for abatement of income tax assessed by the Tax Commission. A part of the taxed income consisted of dividends upon the stock of corporations organized and doing business in the state and it was claimed that the statute was unconstitutional because it provides among other things, for the taxation of individuals but not of corporations. The Supreme Court of New Hampshire, finding the tax permissible under the constitution, says on the above point: "Practically all corporations, not created for eleemosynary purposes, are dividend paying. The income they receive is passed on to their stockholders in the form of dividends, and is then subject to the tax. If the income were also taxed to the corporation when received by it, there would be a manifestly unequal burden placed upon the owners of the corporation. It is true that there may be corporations so organized that the benefit to members or owners therein comes in other ways than by receipt of dividends. As to these there is a failure to tax. But the number of such aggregations, and the amounts involved, must be small. They may be said to be almost negligible, contrasted to the class wherein the income received by the corporation is paid to the stockholders as dividends. But, in any event, the Legislature had to choose between the alternatives of double taxation on the one hand and escape from taxation on the other. In selecting the course which avoided double taxation, the Legislature did not exceed its rights to make a reasonable classification of those who should be taxed. The situation is a necessary incident to the imposition of an income tax, and authority to deal with it in a reasonable way goes with the power to lay such a tax." Conner v. State. 130 Atl. 357. Murchie & Murchie and Alex-

ander Murchie, all of Concord, for plaintiff. Joseph S. Matthews, Asst. Atty. Gen. and Fletcher Hale, of Laconia, for defendant. Fred C. Demond, of Concord, for Concord Chamber of Commerce.

New Jersey.

Inheritance tax. Transfer in contemplation of death. The Supreme Court of New Jersey, says, in a recent decision that under the provisions of chapter 174, Laws of 1922, every transfer made within two years prior to the death of the grantor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall in the absence of proof to the contrary be deemed to have been made in contemplation of death, within the meaning of the statute and that the burden of showing that the transfer was not so made is upon those claiming that fact. In the instant case, the decedent a short time before his death executed a deed of trust to a trust company and transferred to the trustee 400 shares of stock of a New Jersey corporation. The deed of trust created a life estate in favor of his wife and upon her death, the shares were to be equally divided into three parts and further life estates in favor of his three sons were created with power of appointment as to principal by their wills. The shares involved the major portion of the estate and the court found that the transfer had been made in contemplation of death within the meaning of the statute. The court also refused to allow the contention that if the transfer of the deed was made in contemplation of death, it was separate and distinct from the transfer made by the will, and hence should be separately assessed and taxed. Kunhardt v. Bugbee, 130 Atl. 660. Corra N. Williams, of Summit (Robert L. Redfield, of New York City, of counsel), for prosecutor. Edward L. Katzenbach, of Trenton, for defendant.

North Dakota.

Statute taxing corporate excess unconstitutional. The Supreme Court of North Dakota holds that the tax on "corporate excess" as imposed by chapter 305, Laws of 1923, is unconstitutional because the act does not allow any deduction of moneys and credits which are expressly exempted from taxation by chapter 307, Laws of 1923. Chapter 305, amending section 2110, Compiled Laws, provides for taxation of corporate excess, to be measured by taking the market value or actual value of the shares of stock of a corporation and subtracting therefrom the value of all its real estate and of its personal property which is listed for taxation and taxed, the remainder to be listed and taxed as corporate excess. Under this provision moneys and credits may not be deducted in determining corporate excess as they are exempt from taxation and not listed and taxed. The court held that the tax in question is a property tax and not an excise tax. In so far as it may be a tax upon the corporate franchise, it is a tax upon it as property.

Being a property tax based upon the value of the corporate franchise, considered as property, it must conform to the constitutional requirement of uniformity and those against whom it is assessed are entitled to the equal protection of the laws. The tax violates the state Constitution in that it cannot be applied uniformly as among those enjoying similar privileges and it violates the 14th Amendment of the federal Constitution guaranteeing to all persons the equal protection of the laws, in that it denies to corporations, joint-stock companies and associations (as distinguished from individuals), wholly or partially, the benefits of chapter 307, Laws of 1923, exempting moneys and credits from taxation. Gamble-Robinson Fruit Co. v. Thoresen, State Tax Com'r, 204 N. W. 861. T. H. H. Thoresen, of Bismarck, for appellant. Newton, Dullam & Young, of Bismarck, for respondent.

Notes

The Curtis Publishing Company has authorized the issue of 900,000 shares of preferred no par value stock. 700,000 of these shares are to be distributed as a dividend to the holders of the company's common stock. The remainder, or such portion as is required, is to be allotted to the holders of the company's preferred stock ($100 par value) on the basis of eleven shares of the new no par value stock for each ten shares of the par value preferred. As in the case of the Curtis Publishing Company's prior issues of stock The Corporation Trust Company will act as transfer agent of the new issue.

Most lawyers recognize Delaware as a favorable state for the incorporation of ordinary business corporations, but the organization in that state of the Denver & Salt Lake Railway Company, reported in the previous issue of the Journal, suggested the question of how often Delaware is chosen by attorneys for the incorporation of railroad companies. As a side-light for corporation lawyers in judging the broad utility of the Delaware law the following list of companies represented in Delaware by The Corporation Trust Company may prove interesting:

Brazil Central Railroad Company
Denver & Rio Grande Western Railroad Corporation
Denver & Salt Lake Railway Company
Detroit & Ironton Railroad Company
Detroit, Toledo & Ironton Railroad Company
Fort Smith & Western Railway Company
Missouri Pacific Railroad Corporation in Illinois
Missouri Pacific Railroad Corporation in Nebraska
Port Angeles Western Railroad Company
Potrerillas Railway Company
The Western Pacific Railroad Corporation
Tela Railroad Company

Truxillo Railroad Company
Sao Paulo Northern Railroad Company

The Corporation Trust Company has been appointed transfer agent of Schulte Real Estate Company, Inc. (50,000 shares preferred, par value $100, and 500,000 shares common, no par value); transfer agent of Slade Products Inc. (1,000 shares preferred, par value $100, and 2,000 shares common, no par value); transfer agent of Pocono Hotels Corporation (65,000 shares preferred, par value $100, and 12,000 shares common, no par value); transfer agent of International Patents Holding Corporation (50,000 shares common, no par value, and 3,000 shares preferred, par value $100); registrar of Shanklin Manufacturing Company (7,500 shares preferred, no par value, 100,000 shares Class A, no par value, and 10,000 shares Class B, no par value); and registrar of 15,000 shares preferred stock, par value $100, of Lexington Utilities Company.

A wealthy customer of a New York brokerage house owned a large block of a certain stock which took a sudden rise recently. He was eager to take advantage of the market, but was suffering from a paralytic stroke and unable to sign his name. What sort of endorsement would be required to enable the certificate to be transferred without delay? The brokers were requested by telegram to furnish the information. They didn't know. The customer was one of the most important on their books and haste was imperative. The thought came that perhaps The Corporation Trust Company might have the information as this company's experience with corporation matters was so extensive. An inquiry was rushed to us. The answer was simply to direct the brokers' attention to the proper page and paragraph numbers of The Stock Transfer Guide and Service where the requirements in such a situation are fully explained. It is in such ways that The Stock Transfer Guide and Service is every day saving costly delays for brokers, bankers, lawyers and others who have securities to be transferred, and for transfer agents of corporations who wish to know the correct practice in all the many situations that arise in connection with stock transfers.

The entrance of one of the greatest railway equipment manufacturers in the world, American Car & Foundry Company, into the motor bus field was signalized just before Christmas by the organization in Delaware of American Car & Foundry Motors Company, with forty million dollars capital. Incorporation under the Delaware law was entrusted by counsel to The Corporation Trust Company.

Among the many incorporations handled in the past two weeks by The Corporation Trust Company these few examples serve to indicate the wide range of this company's facilities for assisting attorneys regardless of the state in which incorporation may be desired: Consolidated Laundries Corporation, incorporated under the laws of Mary-

land; New Bedford Silk Mills, under the laws of Massachusetts; The San Bernardo Mining Company, under the laws of Arizona; Tampa Paint Company, under the laws of Florida; Niles Crane Corporation, under the laws of New Jersey; Warner Bros. Northwest Theatres, Inc., under the laws of Washington; The Corporation Investment Company, under the laws of Connecticut; The Larvex Company, under the laws of New York; Edgewater Coal Company, under the laws of West Virginia.

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451 corporations were organized under the laws of Delaware from November 20 to December 20, as against 394 reported in last month's Journal for the preceding 30-day period.

Some Important Matters for January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Report due on or before March 1—Foreign Corporations.

ALABAMA—Annual Franchise Tax Statement due between January 1 and March 15—Domestic and Foreign Corporations.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1—Domestic and Foreign Corporations.

CALIFORNIA—Annual License Tax due between January 1 and first Monday of February—Domestic and Foreign Corporations. Capital Stock Affidavit due between January 1 and first Monday of February—Foreign Corporations.

COLORADO—Annual Report due within 60 days after January 1—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report on or before February 15—Domestic and Foreign Corporations.

DOMINION OF CANADA—Annual Income Tax Return due between January 1 and April 30—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between February 1 and March 1—Domestic and Foreign Corporations.

INDIANA—Annual Capital Stock Report due on or before March 1—Foreign Corporations engaged in manufacturing.
Annual Report due during January—Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement and Tax due on or before March 1—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1—Foreign Corporations.

MASSACHUSETTS—Annual Report of information for income tax due between January 1 and March 1—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due between January 1 and March 1—Domestic and Foreign Corporations.

Annual Capital Stock Report and Tax due on or before March 1—Domestic and Foreign Corporations.

MONTANA—Annual Report due between January 1 and March 1—Foreign Corporations.

Annual Return of Net Income due between January 1 and March 1—Domestic and Foreign Corporations.

NEW HAMPSHIRE—Franchise Tax due between January 1 and March 1——Domestic Corporations.

NEW YORK—Capital Stock Report, Real Estate Holding Corporations, Transportation and Transmission Companies, due between January 1 and February 15—Domestic and Foreign Business Corporations. Form 42 C. T. Section 182 of the Tax Law.

PENNSYLVANIA—Capital Stock Report and Corporate Loan Report due between January 1 and February 28—Domestic and Foreign Corporations.

Bonus Report due between January 1 and February 28—Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1—Domestic and Foreign Corporations.

Annual Report due during February—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during month of February—Domestic and Foreign Corporations.

Annual Statement due on or before January 31—Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due between January 1 and March 1—Foreign Corporations.

VERMONT—Annual Tax Return due on or before March 1—Domestic and Foreign Corporations.

Annual License Tax payable on or before March 1—Domestic and Foreign Corporations.

Annual Report due on or before March 1—Domestic Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1—Domestic Corporations.

WISCONSIN—Income Tax Return due on or before March 15—Domestic and Foreign Corporations.

Income Tax due on or before January 31—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its business of assisting counsel in the incorporation, qualification and representation of corporations; of acting as Transfer Agent or Registrar of corporate securities, or as Trustee, Escrow Depositary, etc.; and of preparing and furnishing its various reporting Services, The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

What Constitutes Doing Business. A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business" by a foreign corporation in the sense of requiring qualification.

Safeguarding Stock Transfers. A newly revised edition of this pamphlet, dealing with the many pitfalls in transferring stock on a corporation's books, and the liability of the company's officers for making unauthorized transfers.

Delaware Corporations.—This handy pamphlet presents in most convenient form for quick reference a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non-par value stock, both common and preferred, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Paying Too Much in Taxes. Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary by not observing the proper procedure at the time transactions resulting in gain or loss are being negotiated.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business, and the risks assumed by a corporation in transacting the latter class of business in a state other than that of its incorporation unless license is first obtained.

Certificate of Incorporation of Interstate Power Company. An unusually interesting example of how both common and preferred stock without par value may be handled under the Delaware law. Reprinted by special permission of counsel.

Talks on Foreign Corporations. A series of short articles on this always interesting subject, reprinted from The Corporation Journal.

Transfer Requirement Charts. A convenient card on which the principal requirements exacted by leading transfer agents for various classes of stock transfers are arranged in groups according to the type of name in which the stock stands. A useful guide for corporation officials charged with the heavy responsibility of making transfers on the company's books.

Lawyers' Preliminary Work Sheets. Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference and check up of papers. Furnished in pads of six sheets.

Dangerous Ground

The Ft. Dodge Serum Company, an Iowa corporation, in the course of business relations between itself and the Utah Serum Company, advanced $3,000 to the latter to be used in paying off certain liens on the Utah company's plant which were being pressed for payment. A note secured by mortgage on the property was taken.

Seemingly a plain, clear and safe transaction.

But later, as told in the November number of The Corporation Journal, when action by still another creditor to enforce his claim against the Utah company's property required the Ft. Dodge company to go into court to protect its loan, it found the transaction more complicated.

It found, in fact, that while its having loaned the $3,000 was not disputed, its right to collect the same or to enforce its mortgage as a lien on the property was denied—denied on the ground that at the time the loan was made the company was doing business in Utah without having qualified in the state. The trial court held "that the note and mortgage given by the Utah Serum Company to the Ft. Dodge Serum Company before the latter qualified to do business within this state were null and void and created no lien upon the property, and that the said corporation is not entitled to maintain any action thereon or to recover any judgment herein * * *."

The Supreme Court of Utah affirmed the judgment. (Dunn v. Utah Serum Co. et al., 238 Pac. 245.)

This recent case but illustrates again the fact that when any corporation conducts business transactions outside the state of its incorporation it is on dangerous ground unless it submits to counsel for determination, the question of whether or not the contemplated transaction, and also its previous transactions in that state, constitute "doing business in the state."

Business men often fail to appreciate this danger. Therefore attorneys confer a genuine favor upon their clients when they see that the officers of each corporation they organize or serve are given opportunity to read our pamphlet, "When Doing Business Is Illegal," which explains the reasons for taking counsel's advice promptly upon such matters. Copies supplied free at any office of